

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)	ENFORCEMENT ORDER
Action at:)	
)	
Greenacres Landfill Site)	No. DE 98TC-E105
Spokane, Washington)	
_____)	

To: Liberty Lake Land Company, LLC
Mr. William Rademaker Jr.
1325 Fourth Avenue #1940
Seattle, WA 98101-2500

I.
Jurisdiction

This Enforcement Order (Order) is issued pursuant to the authority of RCW 70.105D.050(1).

II.
Statement of Facts

1. The Greenacres Landfill (Site) is located mostly within the southwest quarter of the southwest quarter of Section 16, Township 25 North, Range 45 East, Willamette Meridian in Spokane County, Washington. The Site covers approximately 55 acres and is situated in a former ravine that merges with the Spokane Valley to the north. Underlying the Spokane Valley is the Spokane-Rathdrum Prairie Aquifer, which was designated as a "Sole Source Aquifer" in 1978 and provides the drinking water for approximately 400,000 people.

2. The Site was reportedly used for dumping through the late 1940's. In 1951, the Site was deeded to Greenacres Township for use as a municipal dump. The Township owned the Site and contracted for site operators from 1951 through March 1967. In March 1967, the Township form of government was dissolved in Spokane County and the Spokane County Health Department was assigned the responsibility for operating the Site. The Health Department contracted for daily operation of the Site.

3. In April 1968, Spokane County Engineer's Office was assigned responsibility for operations at the Site. Spokane County Engineer's Office continued to operate the Site until 1972 when the Site was filled to capacity and closed.

4. In 1971, Spokane County deeded a portion of the Site to Holiday Hills Recreation Center, Inc. In 1972, Spokane County sold the remaining portion of the landfill Site to Holiday Hills Recreation Center, Inc.

5. In July 1976, Wells B. McCurdy, Trustee, acquired title to all of Holiday Hills' property. In 1986, Liberty Lake Investments, Inc. acquired all of the beneficial interest under the Wells B. McCurdy Trust.

6. During a ground water quality monitoring survey in 1978, a nearby residential well, located approximately 600 feet downgradient from the Site and owned by Mrs. Ruth Jeffers was found to be contaminated. Additional testing completed in 1980 indicated the presence of volatile organic compounds in Mrs. Jeffers' well. The Spokane County Health District subsequently advised Mrs. Jeffers to procure an alternative water supply.

7. In 1984 the U.S. Environmental Protection Agency (EPA) placed the Site on the National Priorities List (NPL). Mrs. Jeffers then filed suit against Spokane County alleging a release of contaminants from the Site. Spokane County arranged for an alternative water supply to the Jeffers residence, and the suit was subsequently settled after a monetary payment.

8. In 1985 EPA conducted a preliminary investigation of the Site at which time three ground water monitoring wells were installed. Monitoring data collected by EPA and Ecology indicated the Site was the source of contamination observed in Mrs. Jeffers' well and the two downgradient monitoring wells. The data further indicated that hazardous substances or contaminants were being released into ground waters of the state. These contaminants include volatile and semi-volatile organic compounds and metals. EPA notified Spokane County and Holiday Hills Development, Inc. of its potential liability under CERCLA in 1985.

9. EPA and Ecology agreed in 1985 that Ecology would assume lead agency status of the Site. A Memorandum of Agreement, executed in 1989, between the EPA and Ecology gave Ecology responsibility for all aspects of the remedial investigation, feasibility study, remedial design, remedial action and community relation activities at state lead Superfund sites. The agreement specified that all activities at state lead NPL sites such as the Greenacres Landfill would be completed under state authorities.

10. In 1985 Ecology initiated remedial investigation activities at the Site, undertaking and completing a community relations plan, a seismic refraction survey, a hydrologic budget, and a detailed remedial investigation work plan. Ecology, subsequently notified Spokane County and Holiday Hills Development, Inc., in 1987 of its potential liability under state and federal law and requested that each party assume responsibility for the necessary response actions at the Site. In 1993 Ecology notified Liberty Lake Investments, Inc. of its potential liability under Chapter 70.105D RCW.

11. In 1988, Spokane County began conducting a Remedial Investigation/ Feasibility Study (RI/FS), under Consent Order 87-0926 at the Site. The purpose of the RI was the following: (A) determine the nature and extent of the release or threatened release of hazardous substances, pollutants and contaminants at the Site; and (B) characterize the Site to provide sufficient information to determine the necessity for and the proposed extent of remedial action. The purpose of the FS was to identify, develop, evaluate, and select remedial action alternatives which are consistent with a permanent remedy to prevent or minimize the release, or threatened release of hazardous substances, pollutants and contaminants from the Site.

12. The RI/FS was completed in 1991. The results of the investigation substantiated earlier data that leachate from the landfill is contaminating underlying alluvial and bedrock aquifers with volatile and semi-volatile organic compounds and metals. In addition, low levels of volatile organic gases were detected on-site and off-site during sampling of landfill soil gas.

13. Following a public hearing and additional opportunity for public review and comment, Ecology completed the Final Cleanup Action Plan (FCAP) for the Site on December 21, 1992. The FCAP specified the following requirements for the Site cleanup action:

- A. Conduct indoor air sampling at adjacent residences.
- B. Construct a Minimum Functional Standards cover for the landfill.
 - i) Control landfill gas
 - ii) Control landfill access
 - iii) Control stormwater run on/ run off
- C. Provide institutional controls for the Site.
- D. Monitor Site groundwater.

14. Ecology and Spokane County entered into formal Consent Decree negotiations on April 14, 1993. Consent Decree negotiations for the implementation of the Cleanup Action Plan failed to reach consensus and were terminated after one year.

15. Ecology issued Enforcement Order No. DE 94TC-E101 to Spokane County and Liberty Lake Investments, Inc. on April 18, 1994. The Enforcement Order required the Defendants to implement the Cleanup Action Plan.

16. Spokane County and Liberty Lake Investments, Inc. entered into an indemnity agreement in September 1995. This agreement provided for Spokane County to relieve Liberty Lake Investments, Inc. of any cost associated with the Greenacres Landfill remediation.

17. Spokane County conducted ground water monitoring in accordance with the Order from the period of May 1994 to January 1997. The groundwater monitoring program indicated that volatile organic compounds (VOCs), semi-volatile compounds, and metals are present above the cleanup levels for the Site in several monitoring wells. In addition, the contaminant tetrachloroethylene (PCE) has been detected in the Spokane-

Rathdrum Prairie Aquifer monitoring well since its first sampling round in August 1995. However, the PCE is not currently above the established Site cleanup level of five (5) parts per billion (ppb).

18. Spokane County conducted indoor air sampling of a nearby residence in accordance with the Order in September 1994.

19. Ecology, Liberty Lake Investments, Inc., now known as Liberty Lake Land Company, LLC, and Spokane County entered into formal Consent Decree negotiations on May 7, 1997. Ecology and Spokane County negotiated and signed the Consent Decree to implement the Cleanup Action Plan at the Greenacres Landfill in November 1997. The Consent Decree was made available for public comment and finalized in December 1997. Liberty Lake Land Company elected not to be a signatory to the Decree and elected to be bound by the Enforcement Order issued by Ecology in 1994.

20. Liberty Lake Land Company, LLC was responsible for placing institutional controls on its property affected by soil and groundwater contamination emanating from the Site. Spokane County provided a Site map that described the landfill and groundwater plume boundaries (Figure 1).

21. Liberty Lake Land Company, LLC deeded the landfill property, as defined by the limits of refuse with an additional fifty feet buffer area, to Spokane County with a reversionary clause regarding ownership. Liberty Lake Land Company, LLC also sold the residential property adjacent to the landfill, but retained ownership of the commercial property located north of the landfill.

22. Ecology required Liberty Lake Land Company, LLC to place appropriate institutional controls on the remainder of its property that overlaid the contaminant plume by October 30, 1998. Ecology provided Liberty Lake Land Company, LLC with language for the institutional control plan that was required to be placed on the property.

23. Liberty Lake Land Company, LLC placed inappropriate and incomplete institutional controls on select portions of its property. The institutional controls placed by Liberty Lake Land Company, LLC were not protective of human health and the environment.

III. Ecology Determinations

1. Liberty Lake Land Company, LLC is an "owner" as defined in RCW 70.105D.020(12).

2. The Greenacres Landfill Site is a "Facility" as defined in RCW 70.105D.020(4). The facility limits are actually defined by the extent of soil and

groundwater contamination created by releases of hazardous substances from past or present operations.

3. The Greenacres Landfill and groundwater contaminant plume are located within portions of Sections 16 and 21, Township 25 North, Range 45 East, Willamette Meridian (WM) in Spokane County, approximately fifteen miles east of the City of Spokane.

4. The substances found at the facility as described above are "hazardous substances", as defined in RCW 70.105D.020(7).

5. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, it has been determined that there has been a release or threatened release of hazardous substances from the facility, as defined in RCW 70.105D.020(20).

6. In 1993 Ecology notified Liberty Lake Investments, Inc. of its status as a "potentially liable person(s)" [PLP(s)] under RCW 70.105D.040.

7. Pursuant to RCW 70.105D.030(1) and .050, Ecology may require a PLP to place institutional controls on property where necessary to protect human health and the environment from a release or a threatened release of a hazardous substance from a facility.

8. Based on the foregoing facts, Ecology believes the action required by this Order is in the public interest.

IV. Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Liberty Lake Land Company, LLC take the following remedial actions and that these actions be conducted in accordance with WAC 173-340-440 unless otherwise specifically provided for herein. Liberty Lake Land Company, LLC will place the following institutional controls on its property that overlies the contaminant groundwater plume as shown in the attached Figure 1.

Section 1. Contaminated groundwater in the alluvial and bedrock aquifers beneath the Site and soil remain above Method B Cleanup Levels. Well drilling or the extraction of groundwater for any use in the Site boundaries is prohibited. The contaminant source is the Greenacres Landfill where refuse remains contained within the landfill boundaries. Property outside the landfill boundary may be used for purposes defined in and allowed under the zoning regulations for Spokane County.

Section 2. The Declarant shall prohibit activities on the Property that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the Remedial Action and continued protection of human health and the environment.

Section 3. The Declarant shall prohibit activities on the Property that may result in the release or exposure to the environment of a hazardous substance, which was contained as part of the Remedial Action.

Section 4. The Declarant of the Property must give a thirty (30) day advance written notice to Ecology of the Declarant's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Declarant without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Declarant must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Declarant must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Declarant shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of taking samples.

Section 8. The Declarant of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

V. Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in Ch. 70.105D RCW and Ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs

Liberty Lake Land Company, LLC shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

Liberty Lake Land Company, LLC shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinator

The project coordinator for Ecology is:

William J. Fees, P.E.

State of Washington Dept. of Ecology

4601 North Monroe, Suite 200

Spokane, WA 99205-1295

Upon receipt of this Order, Liberty Lake Land Company, LLC has thirty (30) days to notify Ecology in writing of the name of its selected project coordinator. The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Liberty Lake Land Company, LLC, and all documents including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Liberty Lake Land Company, LLC change project coordinator(s), written notification shall be provided to Ecology or Liberty Lake Land Company, LLC at least ten (10) calendar days prior to the change.

5. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of an experienced professional with appropriate training, experience and expertise in similar work.

Liberty Lake Land Company, LLC shall notify Ecology as to the identity of such person(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of its involvement at the Site. Liberty Lake Land Company, LLC shall provide a copy of this Order to all agents, contractors and subcontractors

retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except when necessary to abate an emergency situation, Liberty Lake Land Company, LLC shall not perform any remedial actions at the Greenacres Landfill Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access

Ecology or any Ecology-authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Liberty Lake Land Company, LLC. When entering the Site under Ch. 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Liberty Lake Land Company, LLC during an inspection unless doing so would interfere with Ecology's sampling. Liberty Lake Land Company, LLC shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

Liberty Lake Land Company, LLC shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Liberty Lake Land Company, LLC shall help coordinate and implement public participation for the Site.

8. Retention of Records

Liberty Lake Land Company, LLC shall preserve in a readily retrievable fashion during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Liberty Lake Land Company, LLC, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Liberty Lake Land Company, LLC may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such

request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Liberty Lake Land Company, LLC is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the Greenacres Landfill Site.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Liberty Lake Land Company, LLC to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Liberty Lake Land Company, LLC without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Liberty Lake Land Company, LLC may have in the Site or any portions thereof, Liberty Lake Land Company, LLC shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Liberty Lake Land Company, LLC shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

All actions carried out by Liberty Lake Land Company, LLC pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.
Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Liberty Lake Land Company, LLC 's receipt of written notification from Ecology that Liberty Lake Land Company, LLC has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

VII.
Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event Liberty Lake Land Company, LLC refuses, without sufficient cause, to comply with any term of this Order, Liberty Lake Land Company, LLC will be liable for:

- (1) Up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- (2) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: December 21, 1998

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By _____